

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

VICKI L. BUSBEE)	
Claimant)	
VS.)	
)	Docket No. 166,635
BEECH AIRCRAFT CORPORATION)	
Respondent)	
Self-Insured)	

ORDER

Claimant appeals from an Award entered by Administrative Law Judge John D. Clark entered May 13, 1996. The Appeals Board heard oral argument on October 22, 1996.

APPEARANCES

Claimant appeared by her attorney, Dennis L. Phelps of Wichita, Kansas. Respondent, a qualified self-insured, appeared by their attorney, Jeff C. Spahn of Wichita, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has reviewed and considered the record listed in the Award. The Appeals Board has also adopted the stipulations listed in the Award.

ISSUES

The Administrative Law Judge found that claimant had not sustained her burden of proving that she sustained an injury arising out of and in the course of her employment. Claimant asked for review of that finding and asked for a decision on all other issues identified in the parties' submission letters.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant contends that she suffers skin problems as a result of working with graphite, fiberglass, and other composite building materials in her employment for respondent. The Administrative Law Judge concluded that claimant failed to sustain her burden of establishing that the skin condition was caused by the exposure at work. The Appeals Board agrees with and affirms the finding by the Administrative Law Judge. The Appeals Board does so for the reasons stated in the findings and conclusions of the Administrative Law Judge which are hereby adopted by the Appeals Board as its own.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark dated May 13, 1996, should be, and is hereby, affirmed.

Fees necessary to defray the expenses of administration of the Workers Compensation Act are hereby assessed against the respondent to be directly paid as follows:

Barber & Associates

Transcript of preliminary hearing	\$158.30
Deposition of Steven M. Passman, M.D.	\$162.80
Deposition of Martha Housholder, M.D.	\$212.06
Deposition of Francine Knight	\$221.55

Don K. Smith & Associates
Deposition of Vicki L. Busbee

Unknown

Ireland Court Reporting
Deposition of Charles T. Hinshaw, Jr.
Transcript of regular hearing

\$263.60
Unknown

IT IS SO ORDERED.

Dated this ____ day of November 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

DISSENT

I respectfully dissent from the opinion of the majority. The greater weight of the opinion testimony from those medical experts who offered an opinion on the issue of causation supports the claimant's position. That is, that the onset of claimant's

condition was due to exposure to irritants at work. From there the evidence suggests a psychological component prolonged and exacerbated what would otherwise have been a minor rash-type condition. Nevertheless, from the medical testimony I would find a direct connection was established between the onset of claimant's condition and her work with respondent. Her subsequent complications are likewise traceable to this initial exposure. Although the Administrative Law Judge discounts the weight to be given to the opinions of claimant's expert, Dr. Charles Hinshaw, the respondent's expert makes the same case for a finding of causation by the claimant's work. In her report of April 28, 1993, to respondent's counsel, Dr. Martha Housholder states:

"In answer to your questions, I do think it is probable that her employment at Beech did produce a skin reaction which caused her initial problem"

Finding the condition to be work related is only the first step in determining the compensability of this claim. Respondent raises several defenses which would ultimately need to be addressed, including date of disablement, notice and written claim. However, these issues were not reached by the Administrative Law Judge nor by the majority. Accordingly, they will not be discussed herein. This dissenting opinion is therefore limited to the issue of injury arising out of and in the course of employment, which the majority found to be determinative of the claim.

BOARD MEMBER

c: Dennis L. Phelps, Wichita, KS
Jeff C. Spahn, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director